

# DIRECTIVE

## WORKFORCE SERVICES

Number: WSD08-7

Date: November 4, 2008

69:123:cs:12333

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: LWIB RECERTIFICATION AND DECERTIFICATION

### EXECUTIVE SUMMARY:

#### Purpose:

The purpose of this directive is to communicate State of California policy and procedures regarding the recertification of Local Workforce Investment Boards (LWIB). In addition, it provides the circumstances under which the Governor may decertify a local board.

#### Scope:

This directive applies to all 49 California LWIBs.

#### Effective Date:

This directive is effective on the date of its issuance.

### REFERENCES:

- Workforce Investment Act (WIA) Sections 117(a)-(d), 121(b), 134(d), and 136(h)
- Department of Labor (DOL) Training and Employment Guidance Letter (TEGL) 17-05, Change 1, Common Measures Policy for the Employment and Training Administration's (ETA) Performance Accountability System and Related Performance Issues (August 13, 2007)
- DOL TEGL 17-05, Common Measures Policy for the ETA's Performance Accountability System and Related Performance Issues (February 17, 2006)
- California Unemployment Insurance Code (CUIC) Sections 14200(b), 14202-14207, 14230(d), and 14232
- Workforce Services Directive WSD07-1, Subject: Common Measures Waiver Request (August 16, 2007)
- WIA Directive WIAD06-21, Subject: Workforce Training Act (SB 293) Implementation Guidance (June 29, 2007)

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- WIAD06-10, Subject: Local Workforce Investment Area (LWIA) Nonperformance Policy (November 14, 2006)
- Workforce Services Information Notice WSIN07-33, Subject: Approval of Common Measures Waiver Request (February 5, 2008)

### **STATE-IMPOSED REQUIREMENTS:**

This document contains some State-imposed requirements. These requirements are indicated by ***bold italic*** type.

### **FILING INSTRUCTIONS:**

This directive supersedes WIA Directive WIAD06-7, dated September 6, 2006, and finalizes Workforce Services Draft Directive WSDD-18, issued for comment on October 8, 2008. The Workforce Services Division (WSD) received one comment during the draft comment period; the comment received did not result in any substantive changes to this directive. A summary of the comment is provided as Attachment 2. Retain this directive until further notice.

### **BACKGROUND:**

WIA Section 117(c)(2), CERTIFICATION states:

- (A) IN GENERAL. – The Governor shall, once every 2 years, certify 1 local board for each local area in the State. [Also reference CUIC Section 14200(b).]
- (B) CRITERIA. – Such certification shall be based on criteria established under subsection (b) [MEMBERSHIP] and, for a second or subsequent certification, the extent to which the local board has ensured that workforce investment activities carried out in the local area have enabled the local area to meet the local performance measures. (Also reference CUIC Sections 14202-14205.)
- (C) FAILURE TO ACHIEVE CERTIFICATION. – Failure of a local board to achieve certification shall result in reappointment and certification of another local board for the local area pursuant to the process described in paragraph (1) [APPOINTMENT OF BOARD MEMBERS AND ASSIGNMENT OF RESPONSIBILITIES] and this paragraph.

WIA Section 117(c)(3), DECERTIFICATION states:

- (A) FRAUD, ABUSE, FAILURE TO CARRY OUT FUNCTIONS – Notwithstanding paragraph (2) [CERTIFICATION], the Governor may decertify a local board, at any time after providing notice and an opportunity for comment, for-
  - (i) fraud or abuse; or
  - (ii) failure to carry out the functions specified for the local board in any of paragraphs (1) through (7) of subsection (d) [FUNCTIONS OF THE LOCAL BOARD].

- (B) NONPERFORMANCE – Notwithstanding paragraph (2) [CERTIFICATION], the Governor may decertify a local board if a local area fails to meet the local performance measures for such local area for 2 consecutive program years [in accordance with section 136(h)] [SANCTIONS FOR LOCAL AREA FAILURE TO MEET LOCAL PERFORMANCE MEASURES].

The Governor recertified the current LWIBs in November of 2006 after determining that the composition of each LWIB met the criteria set in WIA Section 117(b), and each of the LWIB's designated local areas achieved their respective performance standards for recertification, as set by State policy. By December of 2008, the Governor must determine whether or not to recertify each of California's 49 LWIBs based upon their membership and their local area's performance during Program Year (PY) 2007-08.

## **POLICY AND PROCEDURES:**

### **Policy:**

The WIA Section 117 and CUIIC Sections 14202-14205 contain the requirements for nominating, selecting, and appointing LWIB members. Please refer to WIA subsections 117(b) and (c) for information regarding the process.

The WIA Section 117(c)(2) and CUIIC Section 14200(b) provide the federal requirement that the Governor shall, once every two years, certify one LWIB for each local area in the State. Accordingly, the Governor must decide, once every two years, whether or not to recertify the existing LWIB of each local area. A LWIB may be recertified if it has met the required membership and performance criteria, as stated in WIA Section 117(c)(2)(B), for PY 2007-08. In the event that a LWIB does not meet the criteria for recertification, the Governor is required to take action as described in WIA Section 117(c)(2)(C), Failure to Achieve Certification. In this circumstance, steps will be taken to provide the existing LWIB an avenue to correct issues resulting in failure to meet the recertification criteria, and may result in conditional recertification pending attempts to resolve these issues.

Per WIA Section 117(c)(3), the Governor may decertify LWIBs for fraud, abuse, failure to carry out their required functions, or failure to meet local performance measures for two consecutive years. The Governor may decertify a LWIB at any time for the specific reasons listed above. (Note: Decertification of a LWIB is an action separate from a LWIB failing to achieve certification.)

In previous years, the California Workforce Investment Board (State Board) has implemented a LWIB recertification policy which defined the meeting of local performance measures as referenced below:

***“A LWIB can be recertified by December (year) based on meeting the membership criteria, as described in WIA Section 117, and its designated LWIA achieving 80 percent or higher on at least 9 of the 11 locally negotiated performance measures (excluding 2 customer service measures and 4 credential and diploma measures).”***

Beginning in PY 2007-08, and as discussed in [WSIN07-33](#), California implemented the WIA common performance measures. This action eliminates the use of the original 17 WIA performance measures as a basis for assessing performance for the purpose of recertification. Accordingly, the LWIB recertification policy, as applied to common measures, will continue to allow for flexibility in substantially achieving performance goals. Understanding the substantial program redesign necessitated by the three common youth measures, the State Board will consider only the adult and dislocated worker common measures for the purpose of conducting recertification for this single recertification cycle. The local areas, then, must achieve 80 percent or higher on at least five of the six locally negotiated common performance measures (excluding the three youth measures) for PY 2007-08. (Note: In subsequent years, the recertification process will fully include the youth common measures as part of the performance review. The exemption of the youth common measures from this recertification cycle is a one-time only occurrence.)

The 6 common measures include:

ADULT	DISLOCATED WORKER	YOUTH
Entered Employment Rate	Entered Employment Rate	<del>Placement in Employment or Education</del>
Employment Retention Rate	Employment Retention Rate	<del>Attainment of a Degree or Certificate</del>
Average Earnings	Average Earnings	<del>Attainment of a Literacy or Numeracy Gain</del>

#### **Procedures:**

***In order for the Governor to determine that LWIBs are in compliance with the membership requirements of WIA Section 117(b) and CUIC 14200-14205, all LWIBs are required to complete the attached LWIB Recertification Request. Comments are required to explain any vacant positions. The form must be signed by the LWIB chairperson or officially designated alternate.***

***The LWIBs must also complete the attached LWIB Mandated Functions Self-Certification in order to certify that they have carried out the functions specified for the local board in WIA Section 117(d) paragraphs (1) through (7). Both of these documents must be submitted to the WSD Program and Technical Assistance Section no later than 5:00 p.m. on October 31, 2008. For submittal instructions, see the subsection "ACTION" below.***

***Based on the performance outcomes reported to the DOL for PY 2007-08, the WSD will determine whether each local area achieved their respective performance standards for recertification as set by State policy [i.e. 80 percent or higher on at least 5 of the 6 locally negotiated common performance measures (excluding the 3 youth measures) for PY 2007-08]. If an LWIA is not performing at a minimum of 80 percent in at least 5 of the 6 designated measures, State Board staff will coordinate with WSD staff to identify the LWIA's needs relative to***

***improving performance. This will include requiring the LWIA and/or the LWIB to develop a jointly signed corrective action plan and the WSD staff working as necessary with the LWIA and/or the LWIB to help the local area improve its performance. The corrective action plan must be completed as required by [WIAD06-10](#), Subject: LWIA Nonperformance Policy.***

***Additionally, the WSD Program and Technical Assistance Section will review monitoring and expenditure information that will be used to determine fraud, abuse, or failure to carry out the required local board functions as outlined under WIA Section 117(c)(3)(A).***

If a LWIB is determined to be out of compliance regarding its composition or performance, the WSD and State Board staff will work with the local board in a good faith effort to improve those areas out of compliance, granting conditional certification if necessary. Additionally, if the local area is out of compliance in terms of performance, the recommendation to the State Board will include an outline of the local area's proposed corrective action plan. The State Board will forward final recommendations regarding recertification to the Governor. The LWIB will be notified in writing by December 31, 2008, regarding its recertification status.

**ACTION:**

Please bring this directive to the attention of the LWIB and other relevant parties.

***The LWIBs are required to complete the attached LWIB Recertification Request and LWIB Mandated Functions Self-Certification and submit them to the WSD Program and Technical Assistance Section by 5:00 p.m., October 31, 2008. The WSD will accept signed or unsigned copies on or before this date. The signed copies must be received no later than November 28, 2008. Requests submitted after this deadline will not be accepted.***

Mail: Program and Technical Assistance Section  
Workforce Services Division, MIC 50  
Employment Development Department  
P.O. Box 826880  
Sacramento, CA 94280-0001

Overnight Mail: Program and Technical Assistance Section  
Workforce Services Division, MIC 50  
Employment Development Department  
800 Capitol Mall  
Sacramento, CA 95814

Hand Deliver: Program and Technical Assistance Section  
Workforce Services Division  
Employment Development Department  
722 Capitol Mall, Room 5099  
Sacramento, CA 95814

## **INQUIRIES:**

If you have questions concerning this directive, contact your assigned [Regional Advisor](#).

/S/ BOB HERMSMEIER  
Chief  
Workforce Services Division

Attachments are available on the Internet:

1. [LWIB Recertification Request](#) (DOC) (249k)
2. [LWIB Mandated Functions and Duties Self-Certification](#) (DOC)
3. [Summary of Comments](#) (PDF)